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October 5, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
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1919 M Street, N.W.
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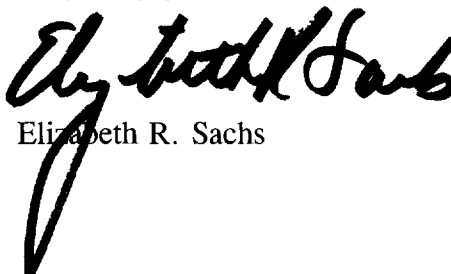
Re: GN Docket No. 94-90
Comments of the American Mobile
Telecommunications Association, Inc.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Comments in the above-referenced proceeding.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,



Elizabeth R. Sachs

ERS:cls

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 25 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services and Radio) GN Docket No. 94-90
Services in the 220-222 MHz Land)
Mobile Band and Use of Radio)
Dispatch Communications)

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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October 5, 1994

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SUMMARY

AMTA supports the Commission's tentative conclusion that the prohibition against provision of service by wireline entities should be eliminated in the 800 MHz and 900 MHz SMR frequency bands. AMTA submits, however, that the ban should be retained in the 220-222 MHz band for the present. Further, AMTA believes that competitive concerns necessitate retaining the prohibition against dispatch services by cellular radio licensees.

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GN Docket No. 94-90

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or the "Association"), pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or the "Commission") Rules (47 C.F.R. § 1.415) respectfully submits its Comments in the above-captioned proceeding.^{1/} For the reasons explained below, AMTA supports the Commission's tentative conclusion that the prohibition against provision of service by wireline entities should be eliminated in the 800 MHz and 900 MHz SMR frequency bands. AMTA submits, however, that the ban should be retained in the 220-222 MHz band for the present. Further, AMTA believes that competitive concerns necessitate retaining the prohibition against dispatch services by cellular radio licensees.

^{1/} Notice of Proposed Rule Making, GN Docket No. 95-90 (adopted August 2, 1994 and released August 11, 1994) ("NPRM" or "Notice").

I. INTRODUCTION

AMTA is a nationwide non-profit trade association dedicated to the interests of what has previously been regulated as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220-222 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as Commercial Mobile Radio Service ("CMRS").

As SMR operators, AMTA's members include most of those licensees which would be impacted by the Commission's decisions concerning wireline entry into the SMR industry. As licensees providing primarily dispatch communications, the Association's members would be further affected by elimination of the prohibition against cellular dispatch. Thus, AMTA has a profound interest in the outcome of this proceeding.

II. BACKGROUND

Wireline telephone common carriers have been prohibited from holding SMR licenses since the service's inception in 1974.^{2/} The Commission's reasoning was based on its view of the new SMR industry: it wished to

^{2/} See Second Report and Order, Docket No. 18262, 46 FCC 2d 752 (1974), codified at 47 C.F.R. § 90.603(c).

promote competition by creating business opportunities for independent entrepreneurs in an environment of vigorous competition. The Commission's design and flexible regulatory structure proved a successful one for nearly twenty years. Hundreds of small and large 800 MHz and 900 MHz operators began providing primarily dispatch communications service to the business community.

When the FCC initiated 220 MHz service, an identical ban on wireline eligibility was adopted, for similar reasons.^{3/} This industry is still in an embryonic stage; the slim slice of spectrum at 220 MHz has been plagued by difficulties including delays in licensing and a court challenge to the Commission's application process. Licensees are now in the process of constructing systems under a single, industry-wide construction deadline, while facing site location and equipment availability concerns. The Commission has also announced plans to re-examine 220 MHz licensing and other rules in a Further Notice of Proposed Rule Making.^{4/}

The Commission has proposed elimination of the wireline eligibility restriction in the past. A Notice of Proposed Rule Making was issued in 1986 after the Commission received requests from wireline carriers for waiver of the prohibition.^{5/} After receiving comments on the issue, the Commission

^{3/} See Report and Order, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991).

^{4/} Third Report and Order, GN Docket No. 93-252, adopted August 9, 1994 and released September 23, 1994, ¶ 15 ("3rd R&O").

^{5/} Notice of Proposed Rule Making, PR Docket No. 86-3, 51 Fed. Reg. 2910 (1986).

terminated the 1986 docket in 1992 as stale, but granted conditional waivers to a few wireline companies. At that time, the FCC elected to retain the wireline prohibition, again in the interest of promoting competition.^{6/}

In August, 1993, the Omnibus Budget Reconciliation Act ("Budget Act") created a new framework for mobile radio services, reclassifying private and common carriers as either CMRS or private mobile service ("PMRS") providers.^{7/} Congress further directed the Commission to amend its rules to provide comparable regulation for substantially similar services. As the NPRM notes, the reclassification of many SMR operators as CMRS eliminated the traditional distinction between common carrier and private services which was a significant basis for the wireline restriction. NPRM ¶ 13.

The FCC again received and sought comment on requests for waiver of the wireline ban in 1993.^{8/} AMTA submitted comments in that proceeding, supporting four of the six waiver proposals.^{9/} A majority of the commenters supported the individual requests. The FCC has not acted on those requests and, instead, has incorporated them in the instant proceeding.

Common carriers licensed since 1982, including all cellular carriers, are

^{6/} See Order, PR Docket No. 86-3, 7 FCC Rcd 4398 (1992).

^{7/} Pub. L. No. 103-66, Title VI, 6002(b)(2), 107 Stat. 312 (1993).

^{8/} FCC Public Notice No. DA 94-329 (April 12, 1994).

^{9/} RAM Mobile Data USA Ltd., Southwestern Bell Corporation, Bell Atlantic Enterprises International, Inc. and US West Paging, Inc. AMTA conditioned its support for requests by Cass Cable TV, Inc. and American Paging, Inc. on the outcome of this proceeding.

currently precluded from providing dispatch services. The ban was statutory,^{10/} and thus, not subject to change by the Commission. As part of the Budget Act, Congress left the restriction in place, but granted discretion to the Commission to repeal it in whole or in part.

In the NPRM, the Commission notes that the 800 MHz service is "substantially licensed in most markets", and that operators are offering a variety of services on both a local and wide-area basis. NPRM ¶ 3. Based on recent, dynamic changes in the mobile wireless marketplace, the Commission tentatively concludes that wireline restrictions "no longer serve a useful purpose" and should be eliminated. NPRM ¶ 15. The FCC further tentatively concludes that the prohibition against cellular dispatch should be modified or eliminated due to recent competitive and regulatory developments. Id.

III. DISCUSSION

A. Wireline SMR Eligibility

AMTA supports the Commission's tentative conclusion that the restriction on licensing of wireline entities in the 800 MHz and 900 MHz SMR frequency bands should be eliminated.^{11/} Large-scale change over the past

^{10/} The prohibition was found in the former language of Section 332 of the Communications Act of 1934, 47 U.S.C. § 332(c)(2) (1982).

^{11/} AMTA's support for eliminating the wireline eligibility restriction extends to all 280 channel pairs currently allocated to the SMR category in the 800 MHz frequency band, and to all 200 channel pairs in the 900 MHz SMR band.

few years in the type and number of licensees providing SMR service, coupled with recent regulatory developments, have diminished the need to protect most licensees from large "players" such as the Regional Bell Operating Companies ("RBOCs") and other local exchange carriers ("LECs"). AMTA agrees with the Commission's suggestion that the addition of these entities to the SMR industry could now enhance, rather than hurt, competition.

The SMR industry was envisioned as a landscape of multiple, competitive operators. Rules limiting the number of channels in initial license grants, prohibiting the licensing of additional channels in a geographic area prior to loading those already licensed (the "40-mile rule") and providing for automatic cancellation of non-loaded channels furthered this design. To a reasonable extent, the SMR industry still consists of many such operators, which provide primarily dispatch communications to hundreds of thousands of customers nationwide.

However, after twenty years of licensing and growth, the industry is relatively mature. All 800 MHz and most 900 MHz SMR channels are already in service in most large urban areas. Moreover, customer demand has fostered the implementation of wide-area SMR systems in both the 800 MHz and 900 MHz band. Along with many remaining small operators, wide-area licensees have aggregated spectrum across large regions, and are poised to offer services competitive with larger CMRS offerings such as cellular and PCS. Such systems do not require the degree of regulatory nurturing that was

appropriate during the early days of this service.

Recent changes in the regulatory scheme for 800 MHz and 900 MHz SMR services also serve to diminish the need for wireline restrictions. The Commission has eliminated both the "40-mile rule" and automatic channel cancellation loading restrictions in the 800 MHz band in furtherance of its goal of ensuring "regulatory parity" as required by the Budget Act.^{12/} The Commission has also announced that future proceedings will establish licensing rules for wide-area systems which will further enhance their competitive capabilities. 3rd R&O ¶ 100. Finally, the Commission has adopted a spectrum cap encompassing the so-called "broadband" services of SMR, cellular and broadband PCS. The cap will limit the amount of spectrum that any entity, including a wireline carrier, could aggregate within a geographic area. Id. ¶ 263. These measures should provide the necessary protection for existing SMR licensees, given the mature state of licensing in this band.

As the Commission notes, past concerns about wireline participation in this service have included the potential for discriminatory interconnection offerings to non-affiliated SMR licensees and use of existing market power in other services to cross-subsidize SMR services. NPRM ¶ 18. The Association agrees with the Commission that other regulatory safeguards may provide

^{12/} After explaining at some length the need to eliminate loading requirements to achieve regulatory parity, the Commission in the 3rd R&O unaccountably elected to retain automatic channel cancellation for incumbent 900 MHz SMR licensees. However, future MTA-wide licensees in this band will not be subject to loading. 3rd R&O ¶¶ 190-195.

adequate protection.

Pursuant to the Budget Act, the Commission has already acted to guarantee good faith negotiation between wireline telephone companies and CMRS providers, as well as interconnection rates and terms no less favorable than those offered to affiliated licensees.^{13/} Independent accounting safeguards have been implemented to protect against cross-subsidization of services.^{14/} The Association is not convinced that full structural separation requirements will be necessary to patrol LEC SMR activity.^{15/} Instead, AMTA urges the Commission to enforce interconnection and accounting provisions stringently to guard against anticompetitive behavior by wireline entities entering the SMR marketplace.

As noted above, AMTA has already submitted comments to the Commission supporting individual waiver requests by four wireline entities. The Association agrees with the Commission that the record in that matter strongly supports the grant of those waiver requests. NPRM ¶ 10. Therefore, regardless of the outcome of this proceeding, AMTA continues to urge the Commission to grant individual waivers of the wireline restriction as requested by Southwestern Bell Corporation, US West Paging, Inc., RAM Mobile Data USA Ltd. and Bell Atlantic Enterprises International, Inc.

^{13/} See Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, ¶¶ 227-239 (1994).

^{14/} Id. ¶ 218.

^{15/} See NPRM ¶ 27.

B. Wireline 220 MHz Service

While the maturity of the 800 MHz marketplace and the reasonably certain future licensing arrangements for the 900 MHz SMR industry eliminate the need for wireline eligibility restrictions in these bands, these conditions do not exist in the 220 MHz industry. AMTA opposes eliminating the wireline eligibility restriction for 220 MHz service at this time.

In the 3rd R&O, the Commission noted that "the service is still in its infancy and its competitive potential largely unknown." 3rd R&O ¶ 127. The FCC further determined that the goal of regulatory symmetry did not require any changes to the current 220 MHz rules. Id. However, due to requests for new licensing opportunities for which the Commission desires a more comprehensive record, it has stated that a separate proceeding will be undertaken in the near future. Id. ¶¶ 127-129.

The future proceeding may significantly change licensing rules for the 220 MHz service. As a result, existing and potential licensees' business plans may also change dramatically. The current atmosphere for both the Commission and the entire existing 220 MHz industry is, therefore, one of profound uncertainty.

Since the Commission has stated that no changes to the present 220 MHz rules are needed to promote regulatory parity among similar services, AMTA submits that immediate lifting of the wireline eligibility restriction is not required. The Association requests that the Commission delay a decision in

this matter until after its re-examination of the 220 MHz rules is complete, and any new rules have been implemented.

C. Cellular Dispatch Service

AMTA disagrees with the Commission's conclusion that competition and diversity of service offerings in the mobile services marketplace would be enhanced through elimination of the common carrier dispatch prohibition. On the contrary, many small, more rural SMR operators could face severe adverse consequences should cellular carriers be permitted to provide dispatch services. AMTA submits that certain anticompetitive results outweigh regulatory symmetry concerns in this area, and urges the Commission to modify the common carrier dispatch prohibition to limit dispatch services to those reclassified CMRS services now providing such services under private land mobile rules. AMTA requests that the Commission retain the prohibition against dispatch offerings by cellular licensees.

Many traditional SMR operators provide dispatch as their primary offering. Interconnected, cellular-like telephone service is provided only as an incidental service. This business approach was dictated by the regulatory structure under which they operated. The FCC's rules prohibited SMR licensees from acquiring more than a barebones minimum number of channels in markets outside more populated urban markets. They could not acquire sufficient spectrum to provide extensive, capacity-demanding interconnected service yet still satisfy the Commission's loading requirements. Therefore,

while spectrum-rich cellular carriers with substantial unused or underutilized capacity could offer dispatch services on a large scale, it is unlikely that their competition, the traditional SMR operator, could counter with competitive cellular-like service. The goal of regulatory symmetry, as described as services actually or potentially competitive, would not be served by allowing cellular dispatch.

Cellular dispatch also raises significant concerns over bundling of services, discriminatory pricing and cross-subsidization. If cellular operators are permitted to fund below-cost dispatch service through subsidization from the more profitable cellular service, SMR operators now providing economical, reliable service at prices often below \$15.00 a month would quickly find themselves out of business. These prices could escalate rapidly once small competitors disappeared, making the dispatch consumer the loser. Further, current dispatch operators would have no incentive to develop innovative new services if faced with competition with such economies of scale as the cellular duopoly.^{16/}

Should the Commission nevertheless decide that elimination of the prohibition is warranted, AMTA urges that the change be implemented at the end of the statutorily-mandated three-year transition period from private carrier to CMRS status. Some carriers may determine to opt for PMRS status,

^{16/} AMTA notes that, should the wireline eligibility restriction be lifted from 800 and 900 MHz service, wireline carriers will essentially be allowed to offer dispatch services through separate affiliates.

foregoing interconnection altogether, due to the consequences of CMRS regulation on their businesses. In such cases, dispatch services will be even more important to them. It is vital that they be afforded a reasonable opportunity to adjust to the entry of cellular carriers into that marketplace. This approach would also give the Commission time to evaluate the competitive status of the dispatch market and the likely effect on it of cellular entry. See NPRM ¶ 32.

AMTA further urges that dispatch service be allowed only on a secondary basis. Cellular carriers would then be forestalled from devoting large amounts of their already ample spectrum to these services, thus exacerbating anticompetitive effects on the dispatch market.

IV. CONCLUSION

For the reasons described herein, AMTA supports the Commission's tentative conclusion to eliminate the wireline eligibility restriction for the 800 MHz and 900 MHz SMR frequency bands. AMTA urges the Commission to retain the restriction for 220 MHz until after a forthcoming examination of the rules for this service has been completed and any new rules become effective. AMTA also urges the Commission to modify the common carrier dispatch prohibition to allow dispatch offerings by those reclassified CMRS services now providing them, while retaining a prohibition on dispatch service by cellular radio licensees.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 5th day of October, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

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